



*Recipient of the American Bar Association Award for Distinguished
Achievement in Environmental Law and Policy.*

CDAА Environmental Circuit Prosecutor Project Annual Report 2006



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INTRODUCTION

In 2006, the California District Attorneys Association's Environmental Circuit Prosecutor Project ("Circuit Prosecutor Project") opened 176 cases and closed 141 cases. The Circuit Prosecutor Project obtained \$1,016,626.00 in fines, penalties, costs, and supplemental environmental projects ("SEPS"). Sentences included approximately 900 days in jail and 19 years probation.

In the fourth quarter of 2006, the Project opened 49 cases and closed 40 cases. The Circuit Prosecutor Project obtained approximately \$241,200.00 in fines, penalties, costs, and SEPS, and 19 years probation.

The Circuit Prosecutor Project is an award-winning, one-of-a-kind program that provides environmental enforcement in California's rural counties. Established in 1998, the project provides experienced environmental prosecutors and assistance to more than 30 rural counties that lack the resources to prosecute environmental crime. In addition, the Project is involved in training and coordinating with other local and state environmental enforcement agencies to enforce environmental laws.

INSIDE THE PROJECT

The Circuit Prosecutor Project operates in over 30 rural counties, which do not have the resources to prosecute environmental crimes. Currently, the Project employs four full-time attorneys, Fran Kammerer, Matt Maclear, Debbie Smith and John Vacek and two part-time attorneys, Gale Filter and William Richmond. The Project also employs a part-time investigator, Rodney Fong, as well as a paralegal, Lauren Bush and an administrative assistant, Taryn Stokell. At this writing, the Project is short three full-time circuit-prosecutors.

The Project received financial support from Cal/EPA during 2003-2006 in the amount of an annual contract for \$300,000 per year. Cal/EPA has informed CDAA that it will not be renewing the \$300,000 grant for FY 2007/2008. The Project needs adequate long-term funding to ensure thorough and effective enforcement of environmental laws. The creation in 2003 of the Environmental Enforcement Training Account Penal Code section 14303 provides supplemental funding, but this funding is not stable since there is no fixed revenue that the account receives.

Budget cuts have greatly reduced the resources once available to the Project and circuit prosecutors in particular. In the first half of 2006, the Project eliminated 28.7% of its staff, including its Redding office and full-time research-attorney position. The research attorney was a valuable resource to circuit prosecutors who spend a great amount of time traveling from jurisdiction to jurisdiction.

As it stands, the 4 full-time and 2 part-time circuit prosecutors cover the vast territory of more than 30 rural counties. The 32 counties combined employ approximately 400 local prosecutors. Circuit prosecutors represent approximately 1% percent of the total number of rural county

The CP Project

Gale Filter

Fran Kammerer
Matt Maclear
Will Richmond
Debbie Smith
John Vacek

Rod Fong

Lauren Bush
Taryn Stokell
Karen Vela

prosecutors. Fewer circuit prosecutors covering more territory means that in 2007 more time and money will be spent on travel and less time on cases. Circuit prosecutors are becoming increasingly more selective regarding the number and types of cases they open.

In 2000, the Project had a core of eight (8) environmental circuit prosecutors. Three of the attorneys either were loaned employees from state agencies (the Department of Toxic Substances Control, the Attorney General, and the Department of Fish and Game). However, since 2003 the Project has struggled to keep adequate numbers of staff. The Project core of eight environmental circuit prosecutors has often been reduced to six (6) or fewer. State agencies no longer loan employees to the Project. Not since the Project's inception in 1998 has the number of circuit prosecutors been below six. Penal Code 14300 amounts increased from 2003 to 2005 but then decreased in 2005 and 2006.

The Project is strongly supported by CDAA's rural district attorneys. "But for" the Circuit Prosecutor Project there would be little, if any, environmental enforcement in the rural counties. The Project ensures that environmental enforcement, a cornerstone to effective environmental protection, continues in some of the most vulnerable and pristine areas of California. Rural counties have seen tangible results from its efforts; in particular, increased compliance from companies doing business in rural counties. The Project provides California with an efficient and cost-effective means to accomplish the goal of ensuring environmental compliance through uniform enforcement.

Given the relatively low cost of the Project and the environmental protection it offers to 32 rural counties, there is no doubt that Californians get a lot of bang for their proverbial buck. As former Shasta County District Attorney (now United States Attorney, Eastern District of California) McGregor Scott once noted, "The Project is the best example of centralized funding and decentralized execution that I am aware of in my years of governmental service."¹

STATISTICS AND RADAR

The Project has used different formats in the past to track cases handled by the attorneys. Prior to the third quarter, an Excel format was used which carried historical data of all cases, opened and closed, conducted by the Project. In an attempt to track more details, and real-time information with the status of the cases, we are using a new system and implementing updating policies. The statistics in this report are based on the information obtained through RADAR (Repeat And Deliberate Actor Registry).

State environmental prosecutors have developed a database called RADAR. Originally created to share thumbnail information between prosecutors with common defendants, the Project has added categories to the database to meet some of our needs. Currently, RADAR allows for the retrieval of the current status of cases and the system is updated monthly. It is being customized to allow for chronological notes to be entered on cases for up-to-the-minute information on the status of a case by any of the circuit prosecutors. In the future, we hope to be able to scan important documents as well.

¹ In 2003, McGregor Scott was appointed by President Bush to be the U.S. Attorney for the Eastern District of California. He remains an active supporter of the Project, especially in light of budget restraints faced by the federal government and the U.S. EPA, in particular.

Most significantly, the database we are currently using will provide an accurate measurement of open and closed cases for the Project.

CASE HIGHLIGHTS

This report covers the Project's activities from January 1, 2006 through December 31, 2006. Case highlights for 2006 include:

People v. Conover (Del Norte County)
People v. PALCO (Humboldt County)
People v. Sondh, et.al. (Kwik Serve) (Glenn County)
People v. Enterprise Chevron (Shasta County)
People v. Kiblinger (El Dorado County)
People v. Waste Management, Inc. (El Dorado County)
People vs. Vaughn (Humboldt County)
People v. Workman (Kings County)
Hazardous Materials Business Plan Cases (Stanislaus County)

A brief summary and articles on those cases and others.

People v. Conover (Del Norte County)

This case involves the discharge of diesel oil into the Crescent City harbor. The case was tried before a jury in Crescent City over three days (October 23-25th). Defendant was convicted of a Water Code violation (13387) and a Fish and Game Code violation (5650), and was sentenced on December 7th. She was given 30 days to serve and placed on probation for three years. The judge indicated that he is going to require full restitution.

People v. PALCO, Miller (Humboldt County)

Pacific Lumber and a company foreman were charged criminally with several Fish and Game violations (streambed alterations and water pollution). On November 1st, Circuit Prosecutor John Vacek settled the case wherein PALCO pled to one criminal count and paid the fine imposed by the court. In addition, PALCO agreed to a separate civil penalty of \$5000.

People v. Sondh, et.al. (Kwik Serve) (Glenn County)

This case involves a gasoline service station known as "Kwik Serve", located in Orland, CA. A civil case was filed July 21, 2005 against three individual defendants (Sondh, Kullar, and Grewal), and KLS Partnership for violations of the Health and Safety Code (Underground Storage of Hazardous Substances) and the Business and Professions Code 17200 et. seq. Defendants Sondh and Kullar comprised the KLS Partnership when they owned and operated Kwik Serve together. Defendants Sondh and Grewal eventually purchased the gas station after the partnership dissolved.

All defendants failed to upgrade the underground storage tanks (USTs) as required by law and Sondh and Grewal continued to operate the USTs after their permit to operate was revoked by the Glenn County CUPA. A settlement was been reached with Ms. Sondh and Mr. Grewal for a total of \$200,000.00, with half of that amount stayed as a term of probation.

People v. Enterprise Chevron (Shasta County)

This case involves a gas station that failed to comply with testing, monitoring, and upgrade requirements required by the Health and Safety Code for underground storage tanks (UST). Violations include, but are not limited to, the failure to install pipeline leak detectors (deadline Nov 04), failure to conduct annual certifications on the tank system monitoring equipment (since Oct 03), failure to install phase I enhanced vapor recovery equipment, and various permit violations. Circuit Prosecutor Fran Kammerer and Enterprise Chevron entered a court approved stipulated judgment for \$50,000.00.

People v. Kiblinger. (El Dorado County)

This case involved the theft of timber off of private property and United States forest lands. Felony and misdemeanor charges were alleged. The defendant also had a multitude of misdemeanors for driving on a suspended license. Minutes before the preliminary hearing, the defendant elected to enter pleas to the charges. He was sentenced to 16 month in state prison for all of his violations. Circuit Prosecutor Gloria Mas handled this case (Gloria is now a Deputy District Attorney for the El Dorado County District Attorney's Elder Abuse Unit).

People v. Waste Management, Inc. (El Dorado County)

Waste Management Inc. and three officers were charged with misdemeanors violations involving solid waste escaping from the collection trucks as well as providing false or misleading statements about failing to recycle items sorted by customers. This case was resolved, under the condition that they sell their interests in the county, by way of stipulated judgment with a permanent injunction for a total of \$50,000.00 in penalties and stayed penalties imposed for future violations.

People vs. Vaughn (Humboldt County)

Two defendants were apprehended poaching high-grade old growth redwood from the Redwood National and State Park, near Orick in Humboldt County. This case was referred by the federal National Park rangers, through the US Attorney's office, San Francisco. Both defendants were charged with felonies. Defendant Vaughn pled to a felony (attempted grand theft of realty by severance) and was sentenced to 120 days in jail.

People v. Workman (Kings County)

This case involves work done by the defendant to the bank on the Kings River without obtaining a streambed alteration agreement from the Department of Fish and Game in violation of Fish and Game Code section 1602. A pre-filing meeting was held on October 20, 2006, at which time the defendant agreed to submit a repair and restoration plan within 5 days. Defendant complied fully with the work plan, and a civil complaint and stipulated judgment for were filed to resolve the case.

Hazardous Materials Business Plan Cases (Stanislaus County)

This was an industry-wide prosecution involving the failure to submit a Hazardous Materials Business Plan inventory form by March 1, 2006, as required by the Health and Safety Code and corresponding California Code of Regulations. Our office met with approximately forty defendants in late August and September. Of fifty-seven cases referred, a total of \$276,200 in paid and stayed penalties was imposed.

CONCLUSION

Multiple local, state and federal agencies and many legislators, both state and nationwide, have affirmed the merits of the Project and have come to the Project's aid with grants and support for permanent funding legislation. This official support reflects the need for and continued commitment to environmental enforcement despite the state of the economy. Long-term funding is necessary to make this unique program a permanent fixture in California.

The Project is the principal source of environmental enforcement for many rural counties and, in concert with local district attorneys, is the principle means by which the citizens of those counties are protected from environmental degradation. Simply put, circuit prosecutors are essential for prosecuting environmental crime. The Project provides rural counties with training to ensure successful enforcement, leading to future compliance. The Project provides an enormous benefit to Californians given its low cost and the environmental protection it affords over 30 rural counties.

Dated: _____, 2007

Gale Filter
Deputy Executive Director